

Bill No. 19-12
Concerning: Human Rights and Civil Liberties – Displaced Service Workers
Revised: September 18, 2012 Draft No. 7
Introduced: May 15, 2012
Enacted: September 18, 2012
Executive: _____
Effective: _____
Sunset Date: None
Ch. _____, Laws of Mont. Co. _____

COUNTY COUNCIL FOR MONTGOMERY COUNTY, MARYLAND

By: Councilmembers Ervin, Rice, Elrich, Riemer and Navarro

AN ACT to:

- (1) require certain contractors to retain certain service workers for a transition period;
- (2) provide enforcement by the Office of Human Rights and the Human Rights Commission;
- (3) authorize the Human Rights Commission to award certain relief; and
- (4) generally regulate the displacement of certain service workers by a covered employer.

By amending

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Sections 27-7 and 27-8, and

By adding

Montgomery County Code
Chapter 27, Human Rights and Civil Liberties
Article X, Displaced Service Workers

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
[Single boldface brackets]	<i>Deleted from existing law by original bill.</i>
<u>Double underlining</u>	<i>Added by amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
* * *	<i>Existing law unaffected by bill.</i>

The County Council for Montgomery County, Maryland approves the following Act:

1 **Sec. 1. Sections 27-7 and 27-8 are amended and Chapter 27, Article**
 2 **X is added as follows:**

3 **27-7. Administration and enforcement.**

4 (a) *Filing complaints.* Any person subjected to a discriminatory act or
 5 practice in violation of this Article, or any group or person seeking to
 6 enforce this Article or Article X, may file with the Director a written
 7 complaint, sworn to or affirmed under the penalties of perjury, that must
 8 state:

- 9 (1) the particulars of the alleged violation;
 10 (2) the name and address of the person alleged to have committed the
 11 violation; and
 12 (3) any other information required by law or regulation.

13 * * *

14 (f) *Initial determination, dismissal before hearing.*

15 (1) The Director must determine, based on the investigation, whether
 16 reasonable grounds exist to believe that a violation of this Article
 17 or Article X occurred and promptly send the determination to the
 18 complainant and the respondent.

19 (2) If the Director determines that there are no reasonable grounds to
 20 believe a violation occurred, and the complainant appeals the
 21 determination to the Commission within 30 days after the
 22 Director sends the determination to the complainant, the Director
 23 promptly must certify the complaint to the Commission. The
 24 Commission must appoint a case review board to consider the
 25 appeal. The board may hear oral argument and must:

- 26 (A) dismiss the complaint without a hearing;
 27 (B) order the Director to investigate further; or

28 (C) set the matter for a hearing by a hearing examiner or the
29 board itself, and consider and decide the complaint in the
30 same manner as if the Director had found reasonable
31 grounds to believe that [discrimination] a violation of this
32 Article or Article X occurred.

33 (3) If the Director determines that there are reasonable grounds to
34 believe a violation occurred, the Director must attempt to
35 conciliate the matter under subsection (g).

36 * * *

37 **27-8. Penalties and relief.**

38 (a) *Damages and other relief for complainant.* After finding a violation
39 of this Article or Article X, the case review board may order the
40 payment of damages (other than punitive damages) and any other
41 relief that the law and the facts warrant, such as:

42 (1) compensation for:

43 * * *

44 (F) financial losses resulting from the discriminatory act or a
45 violation of Article X; and

46 (G) interest on any damages from the date of the
47 discriminatory act or violation, as provided in subsection
48 (c);

49 (2) equitable relief to prevent the discrimination or the violation of
50 Article X and otherwise effectuate the purposes of this Chapter;

51 (3) consequential damages, such as lost wages from employment
52 discrimination or a violation of Article X or higher housing costs
53 from housing discrimination, for up to 2 years after the
54 [discrimination] violation, not exceeding the actual difference in

55 expenses or benefits that the complainant realized while seeking
 56 to mitigate the consequences of the [discrimination] violation
 57 (such as income from alternate employment or unemployment
 58 compensation following employment discrimination); and
 59 (4) any other relief that furthers the purposes of this Article or Article
 60 X or is necessary to eliminate the effects of any discrimination
 61 prohibited under this Article.

62 * * *

63 **ARTICLE X. DISPLACED SERVICE WORKERS PROTECTION ACT.**

64 **27-64. Definitions.**

65 (a) As used in this Article:

66 Awarding authority means any person that awards or enters into a
 67 service contract or subcontract with a contractor to be performed in the
 68 County. Awarding authority includes the County, but does not include
 69 a Federal, State, [[County,]] or municipal government, or a common
 70 ownership community, as defined in Section 10B-2(b).

71 Contractor means any person, including a subcontractor, which enters
 72 into a service contract to be performed in the County and employs more
 73 than 20 service employees in the entire company.

74 Director means the Executive Director of the Office of Human Rights
 75 and includes the Executive Director's designee.

76 Person means any individual, proprietorship, partnership, joint venture,
 77 corporation, limited liability company, trust, association, or other entity
 78 that may employ persons or enter into a service contract.

79 Service contract means a contract between an awarding authority and a
 80 contractor to provide security, janitorial, building maintenance, food

81 preparation, or non-professional health care services in a facility located
 82 in the County which is used as a:

- 83 (1) private school;
- 84 (2) hospital, nursing care facility, or other health care provider;
- 85 (3) institution, such as a museum, convention center, arena, airport,
 86 or music hall;
- 87 (4) multi-family residential building or complex with more than 30
 88 units; or
- 89 (5) commercial building or office building occupying more than
 90 75,000 square feet.

91 Service employee means an individual employed on a full or part-time
 92 basis by a contractor as a:

- 93 (1) building service employee, including a janitor, security officer,
 94 groundskeeper, door staff, maintenance technician, handyman,
 95 superintendent, elevator operator, window cleaner, or building
 96 engineer;
- 97 (2) food service worker, including a cafeteria attendant, line
 98 attendant, cook, butcher, baker, server, cashier, catering worker,
 99 dining attendant, dishwasher, or merchandise vendor;
- 100 (3) non-professional employee performing health care or related
 101 service.

102 Service employee does not include:

- 103 (1) a managerial or confidential employee;
- 104 (2) an employee who works in an executive, administrative, or
 105 professional capacity;
- 106 (3) an employee who earns more than \$30 per hour; or

107 (4) an employee who is regularly scheduled to work less than 10
 108 hours per week.

109 Successor contractor means a contractor that:

110 (1) is awarded a service contract to provide, in whole or in part,
 111 services that are substantially similar to those provided at any
 112 time during the previous 90 days;

113 (2) has purchased or acquired control of a property located in the
 114 County where service employees were employed at any time
 115 during the previous 90 days; or

116 (3) terminates a service contract and hires service employees as its
 117 direct employees to perform services that are substantially
 118 similar, within 90 days after a service contract is terminated or
 119 cancelled.

120 (b) This Article does not limit the ability of an awarding authority to
 121 terminate a service contract or replace a contractor with another
 122 contractor.

123 **27-65. Transition employment period.**

124 (a) Awarding authority. At least 15 days before a service contract is
 125 terminated, an awarding authority must:

126 (1) request the terminated contractor to give the successor contractor
 127 a complete list of the name, date of hire, and job classification of
 128 each service employee working on the service contract;

129 (2) give the successor contractor a complete list of the name, date of
 130 hire, and job classification of each service employee of the
 131 terminated contractor working on the service contract;

132 (3) notify the collective bargaining representative, if any, of the
 133 affected service employees of the pending termination of the
 134 service contract; and

135 (4) ensure that the terminated contractor conspicuously posts, at any
 136 affected work site, a written notice to all affected service
 137 employees describing the pending termination of the service
 138 contract and the employee rights provided by this Article [[is
 139 conspicuously posted at any affected work site]].

140 (5) Where the County is the awarding authority in this Section:

141 (A) terminated or cancelled means a termination for default,
 142 termination for convenience, or mutual termination as
 143 defined in Chapter 11B and the County procurement
 144 regulations; and

145 (B) this Section does not apply to a County service contract
 146 awarded by an emergency procurement or direct purchase
 147 as defined in Chapter 11B and the County procurement
 148 regulations.

149 (b) Successor contractor.

150 (1) Subject to paragraph (3), each successor contractor must offer to
 151 retain each affected service employee at an affected site for 90
 152 days or until the successor contract is terminated, whichever is
 153 earlier.

154 (2) Each successor contractor must give each affected service
 155 employee a written offer of employment for the 90-day transition
 156 period and send a copy to the employee's collective bargaining
 157 representative, if any. Each offer must:

- 158 (A) state the date by which the service employee must accept
- 159 the offer; and
- 160 (B) allow the employee at least 10 days after receiving the
- 161 notice to accept the offer.
- 162 (3) Each successor contractor may:
- 163 (A) [[retain]] offer employment to less than all of the affected
- 164 service employees during the 90 day transition period if
- 165 the successor contractor:
- 166 [[A]] (i) finds that fewer service employees are
- 167 required to perform the work than the terminated
- 168 contractor had employed;
- 169 [[B]] (ii) [[retains service employees by seniority
- 170 within each job classification;]]
- 171 [[C]] (iii) maintains a preferential hiring list of those
- 172 employees not retained; and
- 173 [[D]] (iv) (iii) hires any additional service employees
- 174 from the list[[, in order of seniority,]] until all
- 175 affected service employees have been offered
- 176 employment; and
- 177 (B) refuse to retain a service employee who fails a pre-
- 178 employment ineligibility test administered by the successor
- 179 contractor if the successor contractor:
- 180 (i) routinely requires all service employees to undergo
- 181 the ineligibility test as a condition of employment;
- 182 and

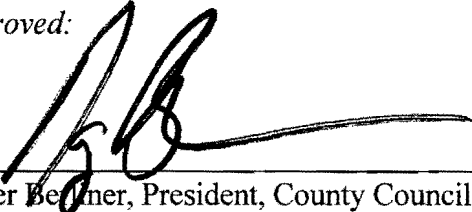
183 (ii) adopted the ineligibility test as part of a written
184 employment policy prior to bidding on the successor
185 contract.

186 (4) Each successor contractor must not discharge a service employee
187 retained under this Section without just cause during the
188 transition period.

189 **27-66. Enforcement.**

190 A service employee who was not [[retained]] offered employment or who was
191 discharged during the transition period [[, or who was discharged]] in violation of
192 this Article, may file a complaint with the Director under Section 27-7.

194 *Approved:*



Roger Berliner, President, County Council

9/19/2012

Date

196 *Approved:*

197 _____
Isiah Leggett, County Executive

Date

198 *This is a correct copy of Council action.*

199

Linda M. Lauer, Clerk of the Council

Date